

DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

Office of General Counsel

22 April 1980

MEMORANDUM FOR: DCI Security Committee
Intelligence Community General Counsels

FROM: Daniel B. Silver
General Counsel

SUBJECT: APEX Secrecy Agreement

1. In the process of attempting to develop a single, uniform secrecy agreement covering APEX material, an issue has arisen regarding the non-disclosure provision. This issue is whether the agreement should contain language, similar to the CIA secrecy agreement, requiring an employee to submit for prior review materials the employee contemplates disclosing publicly which contain any mention of intelligence data or activities that may be based upon or tend to reveal APEX information.

2. The current non-disclosure agreement for sensitive compartmented information does not contain such a provision. It does, however, contain a requirement not to divulge SCI "without prior written authorization from an appropriate official of the United States Government."

3. The validity of a pre-publication review requirement has been upheld by the Supreme Court in the Snepp case, as applied to CIA classified information. It seems virtually certain that such a provision similarly would be upheld as applied to Sensitive Compartmented Information. Without such a provision the only remedy for disclosure in violation of the secrecy agreement may be a suit in which the Government must acknowledge the authenticity of the classified information disclosed. Frequently such acknowledgment is as damaging as the disclosure itself. The advantage of a pre-publication review provision is that, in case of an unauthorized disclosure, the Government can sue for breach of contract without necessarily alleging or proving that classified information was disclosed.

4. For the reasons set forth above, it is my view that the APEX secrecy agreement should contain a clause requiring pre-publication review. Apparently, however, this view is not shared by all members of the Security Committee. Completion of an APEX secrecy agreement is not possible without resolution of this question. Accordingly, I propose that we meet to discuss this matter as soon as possible and will be in touch with all interested parties.



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